

104 FERC ¶ 61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Northern Natural Gas Company

Docket No. RP03-150-002

ORDER ON REHEARING

(Issued July 29, 2003)

1. On December 30, 2002, the Commission issued an order accepting Northern Natural Gas Company's (Northern) filing to establish the level of its annual System Balancing Charge (SBA).¹ The Northern Municipal Distributors Group (NMDG) and the Midwest Region Task Force Association (MRGTF) (collectively NMDG) filed a joint request for rehearing. The Commission denies rehearing.

Discussion

2. The December 30, 2002 order addressed Northern's annual filing recalculating its SBA for the calendar year 2003. The filing applied the same methodology that Northern has utilized in prior years, including filings for the calendar year 2001² and 2002.³ NMDG intervened in those two prior proceedings, as well as in this proceeding, and has raised similar concerns in each. In the prior proceedings, NMDG filed requests for rehearing of the December 20, 2001 compliance order and December 29, 2001 order accepting the filing for the calendar year 2002. The Commission addressed both

¹101 FERC ¶ 61,393 (2002).

²93 FERC ¶ 61,323 (2000), and 97 FERC ¶ 61,314 (2001). The first order in Docket No. RP01-169-000 accepted the filing subject to suspension and refund and requested additional information on December 29, 2000. It was followed by an order accepting Northern's compliance filing on December 20, 2001 in Docket Nos. RP01-169-000 and 001.

³97 FERC ¶ 61,384 (2001) dated December 29, 2001.

rehearing requests in an extensive rehearing order issued April 12, 2002.⁴ That order is now before the Court of Appeals for the D.C. Circuit⁵ and was briefed in January 2003.

3. The Commission's December 30, 2002 order in this proceeding reviewed the protests by NMDG and other parties and concluded that, with one exception not relevant here, the protesting parties had raised no new issues beyond those raised in the filings for 2001 and 2002. The December 30, 2002 order therefore incorporated the Commission's April 12, 2002 order by reference, thus relying on that order to address NMDG's concerns. NMDG first asserts that incorporating the prior order by reference was error, and then advances arguments asserting that Northern's administration of its SBA charge is unjust and unreasonable. At bottom, these arguments assert that the Commission erred in not requiring Northern to allocate the SBA charge to all shippers on its system, and by permitting Northern to exempt from its SBA charge those shippers that are not required to pay the charge under the contracts with Northern. NMDG further asserts that Northern has unfettered discretion to determine which customers will not pay the SBA charge and that this is unreasonable. NMDG therefore requests the Commission exercise its Section 5 authority to require Northern to modify the manner in which it calculates and administers its SBA charge.

4. The Commission will deny rehearing. Having carefully reviewed its earlier April 12, 2002 rehearing order, the Commission concludes that NMDG has raised only one argument that was not adequately discussed by that order. The sole point not explicitly addressed was the assertion that Northern has unfettered discretion to determine what shippers will be exempted from the SBA charge. This is not true since Northern must grant any exemption on a not unduly discriminatory basis, and in response to competitive pressures for discounting that are the basis for that exemption. However, NMDG presented no grounds in this Section 4 proceeding for concluding that Northern is not complying with its obligation to adhere to the Commission's policies. If NMDG wishes to pursue the matter further, it should file a Section 5 complaint. Otherwise, as stated in the prior orders, the Commission will not examine the underlying structure and rationale of the SBA charge outside the context of the general Section 4 filing made by

⁴99 FERC ¶ 61,051 (2002).

⁵Northern Municipal Distributors Group, et. al. v. FERC, Case No. 02-1180, appeal pending.

Northern on May 1, 2003 in Docket No. RP03-398-000.⁶ NMDG and other interest parties are free to pursue the issue of the SBA charge in that proceeding.

The Commission orders:

NMDG's and MRGTF's requests for rehearing are denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁶See 99 FERC at 61,225 for the statement that the SBA issue is to be pursued in the context of Northern's next general Section 4 rate filing. On May 30, 2003, the Commission accepted and suspended Northern's May 1, 2003 filing, subject to refund. See Northern Natural Gas Company, 103 FERC ¶ 61,266 (2003). The filing was made approximately one year earlier than the date cited at 99 FERC at 61,225.